No. 14072

United States Court of Appeals

FOR THE NINTH CIRCUIT.

JOHN HENRY HACKER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF FOR APPELLANT

Appeal from the United States District Court for the Southern District of California, Central Division.

HAROLD SHIRE
208 South Beverly Drive
Beverly Hills, California

HAYDEN C. COVINGTON
124 Columbia Heights
Brooklyn 1, New York

Counsel for Appellant

INDEX

Cases Cited

No. 14072

United States Court of Appeals

FOR THE NINTH CIRCUIT.

JOHN HENRY HACKER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF FOR APPELLANT

Appeal from the United States District Court for the Southern District of California, Central Division.

May It Please the Court:

This is appellant's reply to the brief of appellee. Rather than repeat here the information appearing in the reply brief in the companion case of *Clair Laverne White* v. *United States of America,* No. 13893, filed in this Court, references will be made to that brief.

I.

The appellee argues, at pages 6 and 7 of its brief, that

it is the duty of the boards to classify and the burden rests on the registrant to establish eligibility therefor, to the satisfaction of the board. Appellant does not contest that fact. But appellant says that if the board does not act in accordance with the definition contained in the act but goes outside the law to classify, the appellant is not obliged to satisfy the board. Even if the registrant does not satisfy the board that he is entitled to the classification claimed, the classification given may be upset if there is no basis in fact for the denial of the exemption. See the answer to this argument given under Point III of reply brief filed by Clair Laverne White, No. 13893.

II.

The appellee stated, at page 7 of its brief, that the appeal board rejected the claim for classification because of "the information it had on hand." The appeal board did not have any information on hand that contradicted in any way the undisputed evidence showing that Hacker pursued the ministry as his vocation. There was no basis in fact for the denial by the appeal board of the exemption. —*Annett* v. *United States,* 205 F. 2d 689 (10th Cir. June 26, 1953); *United States* v. *Pekarski,* 207 F. 2d 930 (2d Cir. Oct. 23, 1953); *Dickinson* v. *United States,* 346 U. S. 389, 74 S. Ct. 152; *Schuman* v. *United States,* — F. 2d — (9th Cir. Dec. 21, 1953); *Bejelis* v. *United States,* 206 F. 2d 354 (6th Cir. July 20, 1953); *Jewell* v. *United States,* — F. 2d — (6th Cir. Dec. 22, 1953); *United States* v. *Graham,* 109 F. Supp. 377 (W. D. Ky. 1952); *United States* v. *Alvies,* 112 F. Supp. 618 (N. D. Cal. S. D. 1953).

III.

The appellee argues, at page 8 of its brief, that the *Dickinson* case (346 U. S. 389, 74 S. Ct. 152) is limited to the particular facts of that case. The facts in the *Dickinson* case cannot be distinguished from the facts in this case. The evidence shows that Hacker was pursuing the ministry

as his vocation. It cannot rightly be said that he is a mere bus driver. Even if Hacker devoted more than half of his time to the ministry, under the *Dickinson* case he would still be entitled to classification as a minister. Hacker here, however, devoted only a small part of his time to the business of driving the Chino school bus. When the time feature is applied to his secular activity it becomes apparent that his driving a bus is entirely incidental to the performance of his duties as a full-time minister of the gospel.

Since the undisputed evidence shows that the ministry was his vocation, it must be held that the rule of the *Dickinson* case applies here, as does also the holding by this Court in *Schuman* v. *United States, supra.*

CONCLUSION

It is submitted that the judgment of the court below should be reversed and the appellant ordered acquitted.

Respectfully,

Harold Shire
208 South Beverly Drive
Beverly Hills, California

Hayden C. Covington
124 Columbia Heights
Brooklyn 1, New York

Counsel for Appellant